

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 HENRY NGO WU, ) No. C 07-1438 MMC (PR)  
9 Petitioner, )  
10 vs. ) **ORDER TO SHOW CAUSE**  
11 BEN CURRY, )  
12 Respondent. )  
13

14 On March 13, 2007, petitioner, a California prisoner incarcerated at the Correctional  
15 Training Facility, Soledad, and proceeding pro se, filed the above-titled petition for a writ of  
16 habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

17 **BACKGROUND**

18 In 1990, in Los Angeles County Superior Court, petitioner was convicted of attempted  
19 murder, with enhancements for great bodily injury and the use of a firearm, and sentenced to  
20 a term of 12 years to life in state prison. In 2004, the California Board of Prison Hearings  
21 ("BPH"), for the fourth time, denied petitioner parole. Petitioner challenged this decision by  
22 habeas petitions filed in the Los Angeles County Superior Court, the California Court of  
23 Appeal and the Supreme Court of California. All three habeas petitions were denied.

24 **DISCUSSION**

25 A. Standard of Review

26 This Court may entertain a petition for a writ of habeas corpus "in behalf of a person  
27 in custody pursuant to the judgment of a State court only on the ground that he is in custody  
28 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a);

1 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an  
2 order directing the respondent to show cause why the writ should not be granted, unless it  
3 appears from the application that the applicant or person detained is not entitled thereto."  
4 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the  
5 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See  
6 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,  
7 431 U.S. 63, 75-76 (1977)).

8 B. Petitioner's Claims

9 Petitioner claims: (1) the denial of parole violates his right to due process because  
10 there was not "some evidence" to support the determination that petitioner posed an  
11 unreasonable threat to public safety; and (2) the continued reliance upon petitioner's  
12 commitment offense alone as grounds for denying him parole violates his right to due  
13 process. Liberally construed, petitioner's claims are cognizable.

14 **CONCLUSION**

15 For the reasons stated above, the Court orders as follows:

16 1. The Clerk of the Court shall serve by certified mail a copy of this order and the  
17 petition, along with all attachments thereto, upon respondent and respondent's attorney, the  
18 Attorney General for the State of California. The Clerk shall also serve a copy of this order  
19 on petitioner.

20 2. Respondent shall file with the Court and serve on petitioner, within 90 days of  
21 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules  
22 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
23 granted based on petitioner's cognizable claims. Respondent shall file with the answer and  
24 serve on petitioner a copy of all portions of the state trial record that have been transcribed  
25 previously and that are relevant to a determination of the issues presented by the petition.

26 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
27 the Court and serving it on respondent within 30 days of the date the answer is filed.

28 3. In lieu of an answer, respondent may file, within 90 days of the date this order

1 is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee  
2 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a  
3 motion, petitioner shall file with the Court and serve on respondent an opposition or  
4 statement of non-opposition within 30 days of the date the motion is filed, and respondent  
5 shall file with the Court and serve on petitioner a reply within 15 days of the date any  
6 opposition is filed.

7       4. Petitioner is reminded that all communications with the Court must be served  
8 on respondent by mailing a true copy of the document to respondent's counsel.

9       5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
10 Court and respondent informed of any change of address and must comply with the Court's  
11 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
12 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

13       6. Upon a showing of good cause, requests for a reasonable extension of time will  
14 be granted as long as they are filed on or before the deadline they seek to extend.

15       IT IS SO ORDERED.

16 DATED: June 11, 2007

  
17 MAXINE M. CHESNEY  
18 United States District Judge

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